

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JANET HILLER,

Petitioner,

v.

WARDEN NEVEN, *et al.*,

Respondents.

Case No. 2:19-cv-00260-RFB-EJY

ORDER

This action is a petition for writ of habeas corpus by Janet Hiller, a Nevada prisoner. The Court appointed counsel for Hiller (ECF No. 5). With counsel, Hiller filed a First Amended Petition for Writ of Habeas Corpus on June 28, 2019 (ECF No. 12), and a Second Amended Petition for Writ of Habeas Corpus on March 16, 2020 (ECF No. 24). On May 6, 2020, Hiller filed a motion for a stay (ECF No. 36), so that she could return to state court to exhaust state court remedies with respect to certain of her claims, and on May 22, 2020, the Court granted that motion and stayed this action pending the completion of her state court proceedings (ECF No. 37).

On June 8, 2022, Hiller filed a motion (ECF No. 39) requesting that the stay of this action be lifted for the limited purpose of her filing a third amended habeas petition. Hiller also filed a motion for leave to file her third amended petition (ECF No. 40). Her proposed third amended petition is attached to the motion for leave (ECF No. 40-1), as are exhibits in support of the third amended petition (ECF Nos. 40-2 through 40-8). Hiller states that the amendment is necessary to incorporate into her petition new evidence discovered in the course of the ongoing state court proceedings. In addition, Hiller filed a motion for leave to file an exhibit under seal (ECF No. 41). On June 22, 2022, Respondents filed notices stating that they do not oppose Hiller's motion to temporarily lift the stay, her motion for leave to file a third amended habeas petition, or her motion for leave to file Exhibit 36 under seal (ECF Nos. 43, 44).

1 Under Federal Rule of Civil Procedure 15(a)(2), a party may amend a pleading
2 with the Court's leave. "The court should freely give leave when justice so requires." Fed.
3 R. Civ. P. 15(a)(2). Rule 15 reflects a "policy of favoring amendments to pleadings," and
4 courts should apply that policy "with 'extreme liberality.'" United States v. Webb, 655 F.2d
5 977, 979 (9th Cir. 1981). In deciding whether to grant leave, a court may consider any
6 bad faith, undue delay, or previous amendments on the part of the moving party; any
7 potential prejudice to the opposing party; and potential futility of the amended pleading.
8 In re Morris, 363 F.3d 891, 894 (9th Cir. 2004). Here, there is no showing of bad faith,
9 undue delay, potential prejudice to the respondents, or futility of the amendment, and
10 there is no showing that the requested amendment should be disallowed because of
11 Hiller's previous amendments. The Court will grant Hiller's motion to temporarily lift the
12 stay and her motion for leave to file a third amended habeas petition.

13 In granting Hiller's motion to file a third amended petition, the Court conveys no
14 opinion regarding, and does not mean to affect in any manner, the application of any
15 statute of limitations to this case, and the Court conveys no opinion regarding the merits
16 of any claim in the third amended petition.

17 Regarding Hiller's motion to file her Exhibit 36 under seal, while there is a strong
18 presumption in favor of public access to judicial filings and courts prefer that the public
19 retain access to them, see Nixon v. Warner Communications, Inc., 435 U.S. 589, 597
20 (1978), a court may seal its records if a party demonstrates "compelling reasons" to do
21 so. See Kamakana v. City & Cty. of Honolulu, 447 F.3d 1172, 1178–79 (9th Cir. 2006).
22 "Compelling reasons" exist where the records could be used for improper purposes.
23 Kamakana, 447 F.3d at 1179 (citing Nixon, 435 U.S. at 598). Hiller has made a showing
24 that there are compelling reasons to file her Exhibit 36 under seal, and the Court will grant
25 her motion to do so.

26 **IT IS THEREFORE ORDERED** that Petitioner's Motion to Reopen for Limited
27 Purpose of Filing Third Amended Petition (ECF No. 39) is **GRANTED**. The stay of this
28 action is lifted, temporarily, to allow the filing of Petitioner's Third Amended Petition for

1 Writ of Habeas Corpus. Thereafter, this case will again be stayed and closed
2 administratively.

3 **IT IS FURTHER ORDERED** that Petitioner's Motion for Leave to File a Third
4 Amended Petition (ECF No. 40) is **GRANTED**. Petitioner is granted leave to file his third
5 amended petition (ECF No. 40-1).

6 **IT IS FURTHER ORDERED** that the Clerk of the Court is directed to separately
7 file Petitioner's Third Amended Petition for Writ of Habeas Corpus (ECF No. 40-1), as
8 well as Petitioner's Exhibits in Support of Third Amended Petition for Writ of Habeas
9 Corpus (ECF Nos. 40-2 through 40-8).

10 **IT IS FURTHER ORDERED** that Petitioner's Motion to Seal (ECF No. 41) is
11 **GRANTED**. Petitioner is granted leave of court to file her Exhibit 36 under seal. As that
12 document has already been filed under seal (ECF No. 42), no further action is necessary
13 in this regard.

14 DATED THIS 7th day of December, 2022.

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17 RICHARD F. BOULWARE, II
18 UNITED STATES DISTRICT JUDGE
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